

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Shelley

February 25, 1999

An act to add Section 27491.42 to the Government Code, to amend Sections 1276.5, 1333, 1336.2, 1420, 1424, 1428, 1430, 1599.1, and 7183 of, to add Sections 1254.7 and 1325.1 to, and to repeal and add Section 1417.1 of, the Health and Safety Code, and to amend Section 14124.7 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as introduced, Shelley. Long-term health care facilities.

(1) Existing law requires the coroner to inquire into and determine the circumstance, manner, and cause of any death that occurs under certain conditions.

This bill would require the coroner to determine whether an investigation is warranted, upon receiving a copy of the death certificate of a resident of a nursing facility as required under the bill. The bill would authorize the coroner to request copies of certain medical records of the deceased resident. The bill would require the coroner to transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services within 2 weeks of the resident's death if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

Because the bill would impose new duties upon the county coroner, it would impose a state-mandated local program.

(2) Existing law provides for the licensure and regulation of health facilities, including nursing facilities, administered by the State Department of Health Services. Violations of the provisions regulating health facilities are subject to criminal sanction.

This bill would require a nursing facility, upon the death of a resident of the facility, to submit to the coroner a copy of the deceased resident's death certificate within 24 hours of the death and to submit specified medical records of the deceased resident within 8 hours of the request of the coroner.

(3) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours per patient required in skilled nursing and intermediate care facilities.

This bill would require the regulations to set forth minimum actual nursing hours per patient required in skilled nursing and intermediate care facilities. The bill would require that the minimum number of actual nursing hours per patient required in skilled nursing facilities start at 3.2 hours, effective January 1, 2000, and increase as provided in the bill to 3.4 hours, effective January 1, 2003.

(4) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the department to appoint a temporary manager when (a) continued management of the long-term care facility by the current licensee threatens the health, safety, or security of the residents, (b) the facility has been involuntarily terminated from the Medicare or Medi-Cal program, (c) the facility has been out of compliance with applicable state or federal laws for 3 or more months, or (d) the facility is closing or intends to terminate operations and adequate arrangement for relocation of residents has not been made at least 30 days prior to the closing or termination. The



bill would require the temporary management to end when the facility has been sold to a new licensee. The bill would require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

(5) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or any person or entity with 10% or greater equity interest in the licensee.

(6) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would extend this provision to apply if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

(7) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

This bill would declare the intent of the Legislature to establish, instead, an effective enforcement system and a provisional licensing mechanism.

The bill would establish the standards and penalties imposed by the federal law under Title IV of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) for nursing facilities as state law and require that they be applied to all long-term health care facilities. The bill would specify available remedies against a long-term health care facility. The bill would require the department to adopt regulations for the administration of this provision.

(8) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector. Existing law requires the department to make an onsite inspection or investigation within 10 days of the receipt of the complaint unless the department determines the complaint is willfully intended to harass a licensee or is without any reasonable basis.

This bill would define complaint for purposes of this provision, require the department to notify the complainant of the assigned inspector's name within 5 working days of the receipt of the complaint, and require the onsite inspection unless the department determines the complaint is without any reasonable basis. The bill would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the onsite inspection and within 10 working days of completion of the complaint investigation.

(9) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of the citation be sent to each complainant by certified or registered mail.

(10) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as Class "AA," Class "A," and Class "B" violations, and provides for various civil penalties.

This bill would increase the civil penalties with regard to these violations.

(11) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would include within this process a requirement that the licensee first post security as provided in the bill.



(12) Existing law requires that costs or penalties assessed pursuant to the provisions regulating long-term health care facilities be paid within 30 days of the date the decision regarding the penalties becomes final and requires the department to withhold any payment under the Medi-Cal program until such a debt is satisfied, unless the department determines that it would cause hardship to the facility or to patients or residents of the facility.

This bill would delete the requirement that any costs and penalties assessed be paid within 30 days of the date the decision becomes final. The bill would require the department to withhold any payment under the Medi-Cal program, without the specified exception.

(13) Existing law provides that, except where the department has taken action and the violations have been corrected to its satisfaction, any licensee of a long-term health care facility who commits a class “A” or “B” violation may be enjoined from permitting the violation to continue or may be sued for civil damages. Existing law limits the amount of civil damages that may be recovered in an action brought under this provision to the maximum amount of civil penalties which could be assessed on account of the violation or violations.

This bill would extend the authority to enjoin the violations of a long-term health care facility under this provision to apply to class “AA” violations, authorize suit for reasonable costs and attorney fees, and delete the limitation on the amount of civil damages that may be recovered.

(14) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to \$500.

This bill would authorize, instead, this civil action for violations of any rights of the resident or patient as set forth in the Patients Bill of Rights under state and federal law and would increase the maximum liability to \$25,000.

(15) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient

admitted to the facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient and obligations of a facility that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts a right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer.

(16) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

(17) This bill would require the department to submit a specified report to the Legislature on or before July 1, 2000, concerning the methodology for reimbursement of skilled nursing facilities under the Medi-Cal program.

(18) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 27491.42 is added to the Government Code, to read:

27491.42. (a) Upon the receipt of a copy of the death certificate of a deceased resident of a nursing facility, as defined in subdivision (k) of Section 1250 of the Health and Safety Code, pursuant to Section 1254.7 of the Health and Safety Code, the coroner shall determine whether an investigation is warranted.

(b) The coroner may request from the nursing facility, and shall receive within eight hours of the request, copies of all or any portion of the medical records of the deceased resident that are kept in accordance with regulations adopted pursuant to Section 1275 of the Health and Safety Code.

(c) The coroner shall transmit copies of the deceased resident's death certificate and medical records of the deceased resident to the Director of Health Services, or the director's designee, within two weeks of the death of the resident if the coroner believes that an investigation is warranted or the State Department of Health Services requests the records.

SEC. 2. Section 1254.7 is added to the Health and Safety Code, to read:

1254.7. (a) Upon the death of a resident of a nursing facility, as defined in subdivision (k) of Section 1250, the facility shall submit to the coroner a copy of the resident's death certificate within 24 hours of the death of the resident.

(b) The nursing facility shall submit to the coroner, upon the coroner's request, copies of all or any portion of the medical records of the deceased resident that are kept in accordance with regulations adopted pursuant to Section 1275. The nursing facility shall submit the copies of the medical records within eight hours of the request of the coroner.

SEC. 3. Section 1276.5 of the Health and Safety Code is amended to read:

1 1276.5. (a) The department shall adopt regulations
2 setting forth the minimum number of ~~equivalent~~ *actual*
3 nursing hours per patient required in skilled nursing and
4 intermediate care facilities, subject to the specific
5 requirements of Section 14110.7 of the Welfare and
6 Institutions Code. *However, notwithstanding Section*
7 *14110.7 of the Welfare and Institutions Code or any other*
8 *law, the minimum number of actual nursing hours per*
9 *patient required in a skilled nursing facility shall be as*
10 *follows:*

11 (1) *Effective January 1, 2000, 3.2 hours.*

12 (2) *Effective January 1, 2001, 3.3 hours.*

13 (3) *Effective January 1, 2002, 3.4 hours.*

14 (4) *Effective January 1, 2003, 3.5 hours.*

15 (b) (1) For the purposes of this section, “nursing
16 hours” means the number of *actual* hours of work
17 performed per patient day by aides, nursing assistants, ~~or~~
18 ~~orderlies plus two times the number of hours worked per~~
19 ~~patient day by~~, registered nurses and licensed vocational
20 nurses (except directors of nursing in facilities of 60 or
21 larger capacity) and, in the distinct part of facilities and
22 freestanding facilities providing care for the
23 developmentally disabled or mentally disordered, by
24 licensed psychiatric technicians who perform direct
25 nursing services for patients in skilled nursing and
26 intermediate care facilities, except when the skilled
27 nursing and intermediate care facility is licensed as a part
28 of a state hospital.

29 (2) Concurrent with implementation of the first year
30 of rates established under the Medi-Cal Long Term Care
31 Reimbursement Act of 1990 (Article 3.8 (commencing
32 with Section 14126) of Chapter 7 of Part 3 of Division 9 of
33 the Welfare and Institutions Code), for the purposes of
34 this section, “nursing hours” means the number of hours
35 of work performed per patient day by aides, nursing
36 assistants, registered nurses, and licensed vocational
37 nurses (except directors of nursing in facilities of 60 or
38 larger capacity) and, in the distinct part of facilities and
39 freestanding facilities providing care for the
40 developmentally disabled or mentally disordered, by

1 licensed psychiatric technicians who performed direct
2 nursing services for patients in skilled nursing and
3 intermediate care facilities, except when the skilled
4 nursing and intermediate care facility is licensed as a part
5 of a state hospital.

6 (c) Notwithstanding Section 1276, the department
7 shall require the utilization of a registered nurse at all
8 times if the department determines that the services of
9 a skilled nursing and intermediate care facility require
10 the utilization of a registered nurse.

11 (d) (1) Except as otherwise provided by law, the
12 administrator of an intermediate care
13 facility/developmentally disabled, intermediate care
14 facility/developmentally disabled habilitative, or an
15 intermediate care facility/developmentally
16 disabled—nursing shall be either a licensed nursing home
17 administrator or a qualified mental retardation
18 professional as defined in Section 483.430 of Title 42 of the
19 Code of Federal Regulations.

20 (2) To qualify as an administrator for an intermediate
21 care facility for the developmentally disabled, a qualified
22 mental retardation professional shall complete at least six
23 months of administrative training or demonstrate six
24 months of experience in an administrative capacity in a
25 licensed health facility, as defined in Section 1250,
26 excluding those facilities specified in subdivisions (e),
27 (h), and (i).

28 SEC. 4. Section 1325.1 is added to the Health and
29 Safety Code, to read:

30 1325.1. (a) It is the intent of the Legislature in
31 enacting this section to provide an alternative to the
32 transfer trauma that accompanies the abrupt and
33 involuntary transfer of elderly and disabled residents
34 from long-term care facilities by establishing a system
35 whereby the department may appoint a temporary
36 manager to operate a long-term care facility until the
37 date of its sale to a new owner. It is the intent of the
38 Legislature that the temporary manager protect the
39 residents from transfer trauma in the absence of any
40 other reasonably available alternatives.

1 (b) A temporary manager may be appointed when
2 any of the following circumstances exist:

3 (1) The continued management of the long-term
4 health care facility by the current licensee threatens the
5 health, safety, or security of the residents.

6 (2) The facility has been involuntarily terminated
7 from the Medicare or Medi-Cal programs.

8 (3) The facility has been out of compliance with
9 applicable state or federal laws for three or more months.

10 (4) The facility is closing or intends to terminate
11 operations as a long-term health care facility and
12 adequate arrangement for relocation of residents has not
13 been made at least 30 days prior to the closing or
14 termination.

15 (c) For purposes of this section, “temporary
16 management” means the temporary appointment by the
17 department of a substitute facility manager or
18 administrator with authority to hire, terminate, or
19 reassign staff, obligate facility funds, alter facility
20 procedures, and manage the facility to correct
21 deficiencies identified in the facility’s operation.

22 (d) If a facility fails to relinquish authority to the
23 temporary manager as described in this section, the
24 department shall withhold any funds due to the facility
25 and may revoke the license of the facility.

26 (e) Temporary management shall end when the
27 facility has been sold to a new licensee.

28 (f) The department shall adopt regulations for the
29 administration of this section by December 31, 2000.

30 SEC. 5. Section 1333 of the Health and Safety Code is
31 amended to read:

32 1333. To the extent state funds are advanced *or*
33 *expended* for the salary of the receiver *or temporary*
34 *manager* or for other expenses in connection with the
35 receivership, ~~as limited by subdivision (d) of Section 1329~~
36 ~~*or temporary management*~~, the state shall be reimbursed
37 from the revenues accruing to the facility. If the revenues
38 are insufficient to reimburse the state, the unreimbursed
39 amount shall constitute a lien upon the assets of the
40 ~~facility or the proceeds from the sale thereof. The lien~~

1 ~~shall not attach to the interests of a lessor, unless the lessor~~
2 ~~is operating the facility licensee, or any person or entity~~
3 ~~with a 10 percent or greater equity interest in the licensee~~
4 ~~including, but not limited to, the licensed facility or other~~
5 ~~facilities owned or operated by the licensee or the~~
6 ~~proceeds from the sale or sales thereof.~~

7 SEC. 6. Section 1336.2 of the Health and Safety Code
8 is amended to read:

9 1336.2. (a) When patients are transferred due to any
10 change in the status of the license or operation of a
11 facility, including voluntary or involuntary termination of
12 a facility's Medi-Cal or Medicare certification, the facility
13 shall take reasonable steps to transfer affected patients
14 safely and minimize possible transfer trauma by, at a
15 minimum, doing all of the following:

16 (1) Medically assess, prior to transfer, the patient's
17 condition and susceptibility to adverse health
18 consequences, including psychosocial effects, in the
19 event of transfer. The patient's physician and surgeon, if
20 available, shall undertake this assessment. The assessment
21 shall provide recommendations, including counseling
22 and followup visits, for preventing or ameliorating
23 potential adverse health consequences in the event of
24 transfer.

25 (2) Provide, in accordance with these assessments,
26 counseling, and other recommended services, prior to
27 transfer, to any affected patient who may suffer adverse
28 health consequences due to transfer.

29 (3) Evaluate, prior to transfer, the relocation needs of
30 the patient and the patient's family and determine the
31 most appropriate and available type of future care and
32 services for the patient. The health facility shall discuss
33 the evaluation and medical assessment with the patient
34 or the patient's guardian, agent, or responsible party and
35 make the evaluation and assessment part of the medical
36 records for transfer.

37 (4) Inform, at least 30 days in advance of the transfer,
38 the patient or patient's guardian, agent, or responsible
39 party of alternative facilities that are available and
40 adequate to meet patient and family needs.

1 (5) Arrange for appropriate, future medical care and
2 services, unless the patient or patient's guardian has
3 otherwise made these arrangements. This requirement
4 does not obligate a facility to pay for future care and
5 services.

6 (b) The facility shall provide an appropriate team of
7 professional staff to perform the services required in
8 subdivision (a).

9 (c) The facility shall also give written notice to
10 affected patients or their guardians, agents, or
11 responsible parties advising them of the requirements in
12 subdivision (a) at least 30 days in advance of transfer. If
13 a facility is required to give written notice pursuant to
14 Section 1336, then the notice shall advise the affected
15 patient or the patient's guardian, agent, or responsible
16 party of the requirements in subdivision (a). If the
17 transfer is made pursuant to subdivision (f), the notice
18 shall include notification to the patient that the transfer
19 plan is available to the patient or patient's representative
20 free of charge upon request.

21 (d) In the event of a temporary suspension of a
22 facility's license pursuant to Section 1296, the 30-day
23 notice requirement in subdivision (c) shall not apply, but
24 the facility shall provide the relocation services required
25 in subdivision (a) unless the state department provides
26 the services pursuant to subdivision (e).

27 (e) The state department may provide, or arrange for
28 the provision of, necessary relocation services at a facility,
29 including medical assessments, counseling, and
30 placement of patients, if the state department
31 determines that these services are needed promptly to
32 prevent adverse health consequences to patients, and the
33 facility refuses, or does not have adequate staffing, to
34 provide the services. In these cases, the facility shall
35 reimburse the state department for the cost of providing
36 the relocation services. If a facility's refusal to provide the
37 relocation services required in subdivision (a) endangers
38 the health and safety of patients to be transferred, then
39 the state department may also request that the Attorney
40 General's office or the local district attorney's office seek

1 injunctive relief and damages in the same manner as
2 provided for in Chapter 5 (commencing with Section
3 17200) of Part 2 of Division 7 of the Business and
4 Professions Code.

5 (f) If 10 or more patients are likely to be transferred
6 due to any voluntary *or involuntary* change in the status
7 of the license or operation of a facility, including
8 voluntary *or involuntary* termination of a facility's
9 Medi-Cal or Medicare certification, the facility shall
10 submit a proposed relocation plan for the affected
11 patients to the state department for comment, if any, at
12 least 45 days prior to the transfer of any patient. The plan
13 shall provide for implementation of the relocation
14 services in subdivision (a) and shall describe the
15 availability of beds in the area for patients to be
16 transferred, the proposed discharge process, and the
17 staffing available to assist in the transfers. The facility shall
18 submit its final relocation plan to the local ombudsperson,
19 and if different from the proposed plan, to the state
20 department, at least 30 days prior to the transfer of any
21 patient.

22 SEC. 7. Section 1417.1 of the Health and Safety Code
23 is repealed.

24 ~~1417.1. It is the intent of the Legislature in enacting~~
25 ~~this chapter to establish (1) a citation system for the~~
26 ~~imposition of prompt and effective civil sanctions against~~
27 ~~long-term health care facilities in violation of the laws and~~
28 ~~regulations of this state, and the federal laws and~~
29 ~~regulations as applicable to nursing facilities as defined in~~
30 ~~subdivision (k) of Section 1250, relating to patient care;~~
31 ~~(2) an inspection and reporting system to ensure that~~
32 ~~long-term health care facilities are in compliance with~~
33 ~~state statutes and regulations pertaining to patient care;~~
34 ~~and (3) a provisional licensing mechanism to ensure that~~
35 ~~full-term licenses are issued only to those long-term~~
36 ~~health care facilities that meet state standards relating to~~
37 ~~patient care.~~

38 SEC. 8. Section 1417.1 is added to the Health and
39 Safety Code, to read:

1 1417.1. (a) It is the intent of the Legislature to
2 establish both of the following:

3 (1) An effective enforcement system to deter the
4 violation of, and ensure compliance with (A) state laws
5 and regulations by long-term health care facilities and
6 (B) federal laws and regulations applicable to nursing
7 facilities, as defined by subdivision (k) of Section 1250.

8 (2) A provisional licensing and regulation mechanism
9 to ensure that full-time licenses are issued only to those
10 long-term health care facilities that meet state standards
11 relating to patient care.

12 (b) The standards and penalties imposed by federal
13 law under Title IV of the Omnibus Budget Reconciliation
14 Act of 1987 (Public Law 100-203) for nursing facilities, as
15 defined in Section 1919 of Part 2 of the act and Section
16 1396r of Title 42 of the United States Code, are hereby
17 established in state law and shall be applied to all
18 long-term health care facilities.

19 (c) Available remedies shall include, but not be
20 limited to, bans on admission, civil monetary penalties,
21 directed plans of correction, temporary managers,
22 receivership, and license suspension and revocation.

23 (d) If one or more of the following remedies is actually
24 imposed for violation of state or federal requirements, the
25 long-term health care facility's license may be suspended,
26 and a provisional license may be issued to the facility upon
27 payment of the required fee:

28 (1) Involuntary termination from the Medicare or
29 Medi-Cal program.

30 (2) Appointment of a temporary manager.

31 (3) Civil monetary penalties of one thousand dollars
32 (\$1,000) or more per day.

33 (4) A ban on new admission or denial of payment for
34 either Medicare or Medi-Cal for current residents or for
35 new Medicare or Medi-Cal admissions to the facility.

36 (e) The department shall adopt regulations for the
37 administration of this section.

38 SEC. 9. Section 1420 of the Health and Safety Code is
39 amended to read:

1420. (a) *For purposes of this section, “complaint” means any oral or written notice to the state department of an alleged violation of applicable requirements of state or federal law or of any alleged facts that might constitute such a violation.*

(b) (1) Upon receipt of a written or oral complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant *within five working days of receipt of the complaint* of the name of the inspector. Unless the state department determines that the complaint is ~~willfully intended to harass a licensee or~~ is without any reasonable basis, it shall make an onsite inspection or investigation within 10 working days of the receipt of the complaint. ~~In either event, the complainant shall be promptly informed of the state department’s proposed course of action. Upon~~ However, in any case in which there is a serious threat of imminent danger of death or serious bodily harm, the state department shall make an onsite inspection or investigation within 24 hours of the receipt of the complaint.

(2) Upon the request of either the complainant or the state department, the complainant or his or her representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be violated ~~thereby~~.

~~When~~ *thereby. Prior to the commencement of the onsite inspection or investigation, the complainant shall be promptly informed of the state department’s proposed course of action and of his or her right to accompany the inspector on the inspection or investigation of the facility.*

(3) When conducting an onsite inspection or investigation pursuant to this section, the state department shall collect and evaluate all available evidence and may issue a citation based upon, but not limited to, all of the following:

~~(1)~~

(A) Observed conditions.

1 ~~(2)~~—

2 (B) Statements of witnesses.

3 ~~(3)~~—

4 (C) Facility records. *At the time of the inspection, the*
5 *facility shall make copies of any records requested for*
6 *purposes of the investigation.*

7 (c) *Within 10 working days of completion of the*
8 *complaint investigation, the state department shall notify*
9 *the complainant in writing of the department's*
10 *determination as a result of the inspection or*
11 *investigation.*

12 ~~(b)~~—

13 (d) Upon being notified of the state department's
14 determination as a result of the inspection or
15 investigation, a complainant who is dissatisfied with the
16 state department's determination, regarding a matter
17 which would pose a threat to the health, safety, security,
18 welfare, or rights of a resident, shall be notified by the
19 state department of the right to an informal conference,
20 as set forth in this section. The complainant may, within
21 five business days after receipt of the notice, notify the
22 director in writing of his or her request for an informal
23 conference. The informal conference shall be held with
24 the designee of the director for the county in which the
25 long-term health care facility which is the subject of the
26 complaint is located. The long-term health care facility
27 may participate as a party in this informal conference.
28 The director's designee shall notify the complainant and
29 licensee of his or her determination within 10 working
30 days after the informal conference and shall apprise the
31 complainant and licensee in writing of the appeal rights
32 provided in subdivision ~~(e)~~ (e).

33 ~~(e)~~—

34 (e) If the complainant is dissatisfied with the
35 determination of the director's designee in the county in
36 which the facility is located, the complainant may, within
37 15 days after receipt of this determination, notify in
38 writing the Deputy Director of the Licensing and
39 Certification Division of the state department, who shall
40 assign the request to a representative of the Complainant

Appeals Unit for review of the facts that led to both determinations. As a part of the Complainant Appeals Unit's independent investigation, and at the request of the complainant, the representative shall interview the complainant in the district office where the complaint was initially referred. Based upon this review, the Deputy Director of the Licensing and Certification Division of the state department shall make his or her own determination and notify the complainant and the facility within 30 days.

~~(d)~~

(f) Any citation issued as a result of a conference or review provided for in subdivision ~~(b)~~ (d) or ~~(e)~~ (e) shall be issued and served upon the facility within three *working* days of the final determination, ~~excluding Saturday, Sunday, and holidays~~, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant *by certified or registered mail*.

~~(e)~~

(g) A miniexit conference shall be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. *In any matter in which there is a reasonable probability that the identity of the complainant will not remain anonymous, the department shall also state that it is unlawful to discriminate or seek retaliation against the complainant.*

SEC. 10. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

1 (a) In determining the amount of the civil penalty, all
2 relevant facts shall be considered, including, but not
3 limited to, the following:

4 (1) The probability and severity of the risk that the
5 violation presents to the patient's or resident's mental and
6 physical condition.

7 (2) The patient's or resident's medical condition.

8 (3) The patient's or resident's mental condition and
9 his or her history of mental disability or disorder.

10 (4) The good faith efforts exercised by the facility to
11 prevent the violation from occurring.

12 (5) The licensee's history of compliance with
13 regulations.

14 (b) Relevant facts considered by the department in
15 determining the amount of the civil penalty shall be
16 documented by the department on an attachment to the
17 citation and available in the public record. This
18 requirement shall not preclude the department or a
19 facility from introducing facts not listed on the citation to
20 support or challenge the amount of the civil penalty in
21 any proceeding set forth in Section 1428.

22 (c) Class "AA" violations are violations that meet the
23 criteria for a class "A" violation and that the state
24 department determines to have been a direct proximate
25 cause of death of a patient or resident of a long-term
26 health care facility. A class "AA" citation is subject to a
27 civil penalty in the amount of not less than ~~five thousand~~
28 ~~dollars (\$5,000) and not exceeding~~ twenty-five thousand
29 ~~dollars (\$25,000) and not exceeding one hundred~~
30 ~~thousand dollars (\$100,000)~~ for each citation. In any
31 action to enforce a citation issued under this subdivision,
32 the state department shall prove all of the following:

33 (1) The violation was a direct proximate cause of death
34 of a patient or resident.

35 (2) The death resulted from an occurrence of a nature
36 that the regulation was designed to prevent.

37 (3) The patient or resident suffering the death was
38 among the class of persons for whose protection the
39 regulation was adopted.

1 If the state department meets this burden of proof, the
2 licensee shall have the burden of proving that the licensee
3 did what might reasonably be expected of a long-term
4 health care facility licensee, acting under similar
5 circumstances, to comply with the regulation. If the
6 licensee sustains this burden, then the citation shall be
7 dismissed.

8 For each class “AA” citation within a 12-month period
9 that has become final, the state department shall consider
10 the suspension or revocation of the facility’s license in
11 accordance with Section 1294. For a third or subsequent
12 class “AA” citation in a facility within that 12-month
13 period that has been sustained following a citation review
14 conference, the state department shall commence action
15 to suspend or revoke the facility’s license in accordance
16 with Section 1294.

17 (d) Class “A” violations are violations which the state
18 department determines present either (1) imminent
19 danger that death or serious harm to the patients or
20 residents of the long-term health care facility would
21 result therefrom, or (2) substantial probability that death
22 or serious physical harm to patients or residents of the
23 long-term health care facility would result therefrom. A
24 physical condition or one or more practices, means,
25 methods, or operations in use in a long-term health care
26 facility may constitute a class “A” violation. The condition
27 or practice constituting a class “A” violation shall be
28 abated or eliminated immediately, unless a fixed period
29 of time, as determined by the state department, is
30 required for correction. A class “A” citation is subject to
31 a civil penalty in an amount not less than—~~one~~ *five*
32 ~~thousand dollars (\$1,000)~~ *thousand dollars (\$5,000)* and not exceeding ~~ten~~
33 *twenty-five* ~~thousand dollars (\$10,000)~~ *thousand dollars (\$25,000)* for each
34 and every citation.

35 If the state department establishes that a violation
36 occurred, the licensee shall have the burden of proving
37 that the licensee did what might reasonably be expected
38 of a long-term health care facility licensee, acting under
39 similar circumstances, to comply with the regulation. If

1 the licensee sustains this burden, then the citation shall be
2 dismissed.

3 (e) Class “B” violations are violations that the state
4 department determines have a direct or immediate
5 relationship to the health, safety, or security of long-term
6 health care facility patients or residents, other than class
7 “AA” or “A” violations. Unless otherwise determined by
8 the state department to be a class “A” violation pursuant
9 to this chapter and rules and regulations adopted
10 pursuant thereto, any violation of a patient’s rights as set
11 forth in Sections 72527 and 73523 of Title 22 of the
12 California Administrative Code, that is determined by
13 the state department to cause or under circumstances
14 likely to cause significant humiliation, indignity, anxiety,
15 or other emotional trauma to a patient is a class “B”
16 violation. A class “B” citation is subject to a civil penalty
17 in an amount not less than one ~~hundred~~ *thousand* dollars
18 ~~(\$100)~~ *(\$1,000)* and not exceeding ~~one~~ *five* thousand
19 dollars ~~(\$1,000)~~ *(\$5,000)* for each and every citation. A
20 class “B” citation shall specify the time within which the
21 violation is required to be corrected. If the state
22 department establishes that a violation occurred, the
23 licensee shall have the burden of proving that the licensee
24 did what might reasonably be expected of a long-term
25 health care facility licensee, acting under similar
26 circumstances, to comply with the regulation. If the
27 licensee sustains this burden, then the citation shall be
28 dismissed.

29 In the event of any citation under this paragraph, if the
30 state department establishes that a violation occurred,
31 the licensee shall have the burden of proving that the
32 licensee did what might reasonably be expected of a
33 long-term health care facility licensee, acting under
34 similar circumstances, to comply with the regulation. If
35 the licensee sustains this burden, then the citation shall be
36 dismissed.

37 (f) (1) Any willful material falsification or willful
38 material omission in the health record of a patient of a
39 long-term health care facility is a violation.

1 (2) “Willful material falsification,” as used in this
2 section, means any entry in the patient health care record
3 pertaining to the administration of medication, or
4 treatments ordered for the patient, or pertaining to
5 services for the prevention or treatment of decubitus
6 ulcers or contractures, or pertaining to tests and
7 measurements of vital signs, or notations of input and
8 output of fluids, that was made with the knowledge that
9 the records falsely reflect the condition of the resident or
10 the care or services provided.

11 (3) “Willful material omission,” as used in this section,
12 means the willful failure to record any untoward event
13 that has affected the health, safety, or security of the
14 specific patient, and that was omitted with the knowledge
15 that the records falsely reflect the condition of the
16 resident or the care or services provided.

17 (g) A violation of subdivision (e) may result in a civil
18 penalty not to exceed ten thousand dollars (\$10,000), as
19 specified in paragraphs (1) to (3), inclusive.

20 (1) The willful material falsification or willful material
21 omission is subject to a civil penalty of not less than two
22 thousand five hundred dollars (\$2,500) or more than ten
23 thousand dollars (\$10,000) in instances where the health
24 care record is relied upon by a health care professional to
25 the detriment of a patient by affecting the administration
26 of medications or treatments, the issuance of orders, or
27 the development of plans of care. In all other cases,
28 violations of this subdivision are subject to a civil penalty
29 not exceeding two thousand five hundred dollars
30 (\$2,500).

31 (2) Where the penalty assessed is one thousand dollars
32 (\$1,000) or less, the violation shall be issued and enforced,
33 except as provided in this subdivision, in the same
34 manner as a class “B” violation, and shall include the right
35 of appeal as specified in Section 1428. Where the assessed
36 penalty is in excess of one thousand dollars (\$1,000), the
37 violation shall be issued and enforced, except as provided
38 in this subdivision, in the same manner as a class “A”
39 violation, and shall include the right of appeal as specified
40 in Section 1428.

1 Nothing in this section shall be construed as a change
2 in previous law enacted by Chapter 11 of the Statutes of
3 1985 relative to this paragraph, but merely as a
4 clarification of existing law.

5 (3) Nothing in this subdivision shall preclude the state
6 department from issuing a class “A” or class “B” citation
7 for any violation that meets the requirements for that
8 citation, regardless of whether the violation also
9 constitutes a violation of this subdivision. However, no
10 single act, omission, or occurrence may be cited both as
11 a class “A” or class “B” violation and as a violation of this
12 subdivision.

13 (h) The director shall prescribe procedures for the
14 issuance of a notice of violation with respect to violations
15 having only a minimal relationship to patient safety or
16 health.

17 (i) Nothing in this section is intended to change
18 existing statutory or regulatory requirements governing
19 the ability of a licensee to contest a citation pursuant to
20 Section 1428.

21 (j) The department shall ensure that district office
22 activities performed under Sections 1419 to 1424,
23 inclusive, are consistent with the requirements of these
24 sections and all applicable laws and regulations. To ensure
25 the integrity of these activities, the department shall
26 establish a statewide process for the collection of
27 postsurvey evaluations from affected facilities.

28 SEC. 11. Section 1428 of the Health and Safety Code
29 is amended to read:

30 1428. (a) *(1) If a licensee desires to contest a citation*
31 *or the proposed assessment of a civil penalty, the licensee*
32 *shall first post as security, in cash or cash equivalent, an*
33 *amount equal to the civil penalty indicated. If upon the*
34 *completion of the appeals process, it is determined that*
35 *the civil penalty should be dismissed, waived, or reduced,*
36 *the balance of the security, after deduction of any*
37 *applicable penalties, shall remit back to the licensee.*

38 (2) If the licensee desires to contest a citation or the
39 proposed assessment of a civil penalty therefor, the



1 licensee shall use the processes described in subdivisions
2 (b) and (c) for classes “AA,” “A,” or “B” citations. ~~As~~

3 (3) As a result of a citation review conference, a
4 citation or the proposed assessment of a civil penalty may
5 be affirmed, ~~modified~~ *increased, decreased,* or dismissed
6 by the director or the director’s designee. If the director’s
7 designee affirms, ~~modifies~~ *increases, decreases,* or
8 dismisses the citation or proposed assessment of a civil
9 penalty, he or she shall state with particularity in writing
10 his or her reasons for that action, and shall immediately
11 transmit a copy thereof to each party to the original
12 complaint. If the licensee desires to contest a decision
13 made after the citation review conference, the licensee
14 shall inform the director in writing within 15 business
15 days after he or she receives the decision by the director’s
16 designee.

17 (b) If a licensee notifies the director that he or she
18 intends to contest a class “AA” or a class “A” citation, the
19 licensee may first, within 15 business days after service of
20 the citation, notify the director in writing of his or her
21 request for a citation review conference. The licensee
22 shall inform the director in writing, within 15 business
23 days of the service of the citation or the receipt of the
24 decision of the director’s designee after the citation
25 review conference, of the licensee’s intent to adjudicate
26 the validity of the citation in the municipal or superior
27 court in the county in which the long-term health care
28 facility is located. In order to perfect a judicial appeal of
29 a contested citation, a licensee shall file a civil action in
30 the municipal or superior court in the county in which the
31 long-term health care facility is located. The action shall
32 be filed no later than 90 calendar days after a licensee
33 notifies the director that he or she intends to contest the
34 citation, or no later than 90 days after the receipt of the
35 decision by the director’s designee after the citation
36 review conference, and served not later than 90 days after
37 filing. Notwithstanding any other provision of law, a
38 licensee prosecuting a judicial appeal shall file and serve
39 an at-issue memorandum pursuant to Rule 209 of the
40 California Rules of Court within six months after the state

1 department files its answer in the appeal.
2 Notwithstanding subdivision (d), the court shall dismiss
3 the appeal upon motion of the state department if the
4 at-issue memorandum is not filed by the facility within
5 the period specified.

6 (c) If a licensee desires to contest a class “B” citation,
7 the licensee may request, within 15 business days after
8 service of the citation, a citation review conference, by
9 writing the director or the director’s designee of the
10 licensee’s intent to appeal the citation through the
11 citation review conference. If the licensee wishes to
12 appeal the citation which has been upheld in a citation
13 review conference, the licensee shall, within 15 working
14 days from the date the citation review conference
15 decision was rendered, notify the director or the
16 director’s designee that he or she wishes to appeal the
17 decision through the procedures set forth in Section
18 100171 or elects to submit the matter to binding
19 arbitration in accordance with subdivision (d). The
20 administrative law judge may affirm, modify, or dismiss
21 the citation or the proposed assessment of a civil penalty.
22 The licensee may choose to have his or her appeal heard
23 by the administrative law judge or submit the matter to
24 binding arbitration without having first appealed the
25 decision to a citation review conference by notifying the
26 director in writing within 15 business days of the service
27 of the citation.

28 (d) If a licensee is dissatisfied with the decision of the
29 administrative law judge, the licensee may, in lieu of
30 seeking judicial review of the decision as provided in
31 Section 1094.5 of the Code of Civil Procedure, elect to
32 submit the matter to binding arbitration by filing, within
33 60 days of its receipt of the decision, a request for
34 arbitration with the American Arbitration Association.
35 The parties shall agree upon an arbitrator designated
36 from the American Arbitration Association in accordance
37 with the association’s established rules and procedures.
38 The arbitration hearing shall be set within 45 days of the
39 election to arbitrate, but in no event less than 28 days
40 from the date of selection of an arbitrator. The arbitration

1 hearing may be continued up to 15 additional days if
 2 necessary at the arbitrator's discretion. Except as
 3 otherwise specifically provided in this subdivision, the
 4 arbitration hearing shall be conducted in accordance
 5 with the American Arbitration Association's established
 6 rules and procedures. The arbitrator shall determine
 7 whether the licensee violated the regulation or
 8 regulations cited by the department, and whether the
 9 citation meets the criteria established in Sections 1423
 10 and 1424. If the arbitrator determines that the licensee
 11 has violated the regulation or regulations cited by the
 12 department, and that the class of the citation should be
 13 upheld, the proposed assessment of a civil penalty shall be
 14 affirmed, subject to the limitations established in Section
 15 1424. The licensee and the department shall each bear its
 16 respective portion of the cost of arbitration. A resident, or
 17 his or her designated representative, or both, entitled to
 18 participate in the citation review conference pursuant to
 19 subdivision (f), may make an oral or written statement
 20 regarding the citation, at any arbitration hearing to which
 21 the matter has been submitted after the citation review
 22 conference.

23 (e) If an appeal is prosecuted under this section,
 24 including an appeal taken in accordance with Section
 25 100171, the state department shall have the burden of
 26 establishing by a preponderance of the evidence that (1)
 27 the alleged violation did occur, (2) the alleged violation
 28 met the criteria for the class of citation alleged, and (3)
 29 the assessed penalty was appropriate. The state
 30 department shall also have the burden of establishing by
 31 a preponderance of the evidence that the assessment of
 32 a civil penalty should be upheld. If a licensee fails to notify
 33 the director in writing that he or she intends to contest
 34 the citation, or the proposed assessment of a civil penalty
 35 therefor, or the decision made by the director's designee,
 36 after a citation review conference, within the time
 37 specified in this section, the decision by the director's
 38 designee after a citation review conference shall be
 39 deemed a final order of the state department and shall not
 40 be subject to further administrative review, except that

1 the licensee may seek judicial relief from the time limits
2 specified in this section. If a licensee appeals a contested
3 citation or the assessment of a civil penalty, no civil
4 penalty shall be due and payable unless and until the
5 appeal is terminated in favor of the state department.
6 *This subdivision does not alter the obligation of the*
7 *licensee under subdivision (a) to post security in the*
8 *amount of the penalty assessed. When the appeal is*
9 *terminated in favor of the licensee, the department shall*
10 *return the amount posted, minus any penalties due,*
11 *within 10 days of written notice of the decision.*

12 (f) The director or the director's designee shall
13 establish an independent unit of trained citation review
14 conference hearing officers within the state department
15 to conduct citation review conferences. Citation review
16 conference hearing officers shall be directly responsible
17 to the deputy director for licensing and certification, and
18 shall not be concurrently employed as supervisors,
19 district administrators, or regional administrators with
20 the licensing and certification division. Specific training
21 shall be provided to members of this unit on conducting
22 an informal conference, with emphasis on the regulatory
23 and legal aspects of long-term health care.

24 Where the state department issues a citation as a result
25 of a complaint or regular inspection visit, and a resident
26 or residents are specifically identified in a citation by
27 name as being specifically affected by the violation, then
28 the following persons may attend the citation review
29 conference:

30 (1) The complainant and his or her designated
31 representative.

32 (2) A personal health care provider, designated by the
33 resident.

34 (3) A personal attorney.

35 (4) Any person representing the Office of the State
36 Long-Term Care Ombudsman, as defined in subdivision
37 (c) of Section 9701 of the Welfare and Institutions Code.

38 Where the state department determines that residents
39 in the facility were threatened by the cited violation but
40 does not name specific residents, any person representing

1 the Office of the State Long-Term Care Ombudsman, as
2 defined in subdivision (c) of Section 9701 of the Welfare
3 and Institutions Code, and a representative of the
4 residents or family council at the facility may participate
5 to represent all residents. In this case, these
6 representatives shall be the sole participants for the
7 residents in the conference. The residents or family
8 council shall designate which representative will
9 participate.

10 The complainant, affected resident, and their
11 designated representatives shall be notified by the state
12 department of the conference and their right to
13 participate. The director's designee shall notify the
14 complainant or his or her designated representative and
15 the affected resident or his or her designated
16 representative, of his or her determination based on the
17 citation review conference.

18 (g) In assessing the civil penalty for a violation, all
19 relevant facts shall be considered, including, but not
20 limited to, all of the following:

21 (1) The probability and severity of the risk which the
22 violation presents to the patient's or resident's mental and
23 physical condition.

24 (2) The patient's or resident's medical condition.

25 (3) The patient's or resident's mental condition and
26 his or her history of mental disability.

27 (4) The good faith efforts exercised by the facility to
28 prevent the violation from occurring.

29 (5) The licensee's history of compliance with
30 regulations.

31 (h) Except as otherwise provided in this subdivision,
32 an assessment of civil penalties for a class "A" or class "B"
33 violation shall be trebled and collected for a second and
34 subsequent violation for which a citation of the same class
35 was issued within any 12-month period. Trebling shall
36 occur only if the first citation issued within the 12-month
37 period was issued in the same class, a civil penalty was
38 assessed, and a plan of correction was submitted for the
39 previous same-class violation occurring within the period,
40 without regard to whether the action to enforce the

1 previous citation has become final. However, the
2 increment to the civil penalty required by this
3 subdivision shall not be due and payable unless and until
4 the previous action has terminated in favor of the state
5 department.

6 If the class “B” citation is issued for a patient’s rights
7 violation, as defined in subdivision (c) of Section 1424, it
8 shall not be trebled unless the state department
9 determines the violation has a direct or immediate
10 relationship to the health, safety, security, or welfare of
11 long-term health care facility residents.

12 (i) The director shall prescribe procedures for the
13 issuance of a notice of violation with respect to violations
14 having only a minimal relationship to safety or health.

15 (j) Actions brought under this chapter shall be set for
16 trial at the earliest possible date and shall take
17 precedence on the court calendar over all other cases
18 except matters to which equal or superior precedence is
19 specifically granted by law. Times for responsive pleading
20 and for hearing the proceeding shall be set by the judge
21 of the court with the object of securing a decision as to
22 subject matters at the earliest possible time.

23 (k) If the citation is dismissed, the state department
24 shall take action immediately to ensure that the public
25 records reflect in a prominent manner that the citation
26 was dismissed.

27 (l) Penalties paid on violations under this chapter shall
28 be applied against the state department’s accounts to
29 offset any costs incurred by the state pursuant to this
30 chapter. ~~Any costs or penalties assessed pursuant to this~~
31 ~~chapter shall be paid within 30 days of the date the~~
32 ~~decision becomes final.~~ If a facility does not comply with
33 this requirement, the state department shall withhold
34 any payment under the Medi-Cal program until the debt
35 is satisfied. ~~No payment shall be withheld if the state~~
36 ~~department determines that it would cause undue~~
37 ~~hardship to the facility or to patients or residents of the~~
38 ~~facility.~~

39 (m) The amendments made to subdivisions (a) and
40 (c) of this section by Chapter 84 of the Statutes of 1988,

1 to extend the number of days allowed for the provision of
2 notification to the director, do not affect the right, that is
3 also contained in those amendments, to request judicial
4 relief from these time limits.

5 SEC. 12. Section 1430 of the Health and Safety Code
6 is amended to read:

7 1430. (a) ~~Except where the state department has~~
8 ~~taken action and the violations have been corrected to its~~
9 ~~satisfaction, any~~ Any licensee who commits a class “A”
10 “AA,” “A,” or “B” violation may be enjoined from
11 permitting the violation to continue or may be sued for
12 civil damages *and for reasonable costs and attorney fees*
13 within a court of competent jurisdiction. Such actions for
14 injunction or civil damages, or both, may be prosecuted
15 by the Attorney General in the name of the people of the
16 State of California upon his or her own complaint or upon
17 the complaint of any board, officer, person, corporation
18 or association, or by any person acting for the interests of
19 itself, its members or the general public. ~~The amount of~~
20 ~~civil damages which may be recovered in an action~~
21 ~~brought pursuant to this section shall not exceed the~~
22 ~~maximum amount of civil penalties which could be~~
23 ~~assessed on account of the violation or violations.~~

24 (b) A resident or patient of a skilled nursing facility, as
25 defined in subdivision (c) of Section 1250, or
26 intermediate care facilities, as defined in subdivision (d)
27 of Section 1250, may bring a civil action against the
28 licensee of a facility who violates any rights of the resident
29 or patient as set forth in the Patients Bill of Rights ~~in~~
30 ~~Section 72527 of Title 22 of the California Administrative~~
31 ~~Code under state and federal law.~~ The suit shall be
32 brought in a court of competent jurisdiction. The licensee
33 shall be liable for the acts of the licensee’s employees. The
34 licensee shall be liable for up to ~~five hundred dollars~~
35 ~~(\$500)~~ *twenty-five thousand dollars (\$25,000)* in
36 damages, and for *reasonable* costs and attorney fees, and
37 may be enjoined from permitting the violation to
38 continue. An agreement by a resident or patient of a
39 skilled nursing facility or intermediate care facility to

1 waive his or her rights to sue pursuant to this subdivision
2 shall be void as contrary to public policy.

3 (c) The remedies specified in this section shall be in
4 addition to any other remedy *or remedies* provided by
5 law.

6 SEC. 13. Section 1599.1 of the Health and Safety Code
7 is amended to read:

8 1599.1. Written policies regarding the rights of
9 patients shall be established and shall be made available
10 to the patient, to any guardian, next of kin, sponsoring
11 agency or representative payee, and to the public. Those
12 policies and procedures shall ensure that each patient
13 admitted to the facility has the following rights and is
14 notified of the following facility obligations, in addition to
15 those specified by regulation:

16 (a) The facility shall employ an adequate number of
17 qualified personnel to carry out all of the functions of the
18 facility.

19 (b) Each patient shall show evidence of good personal
20 hygiene, be given care to prevent bedsores, and measures
21 shall be used to prevent and reduce incontinence for each
22 patient.

23 (c) The facility shall provide food of the quality and
24 quantity to meet the patients' needs in accordance with
25 physicians' orders.

26 (d) The facility shall provide an activity program
27 staffed and equipped to meet the needs and interests of
28 each patient and to encourage self-care and resumption
29 of normal activities. Patients shall be encouraged to
30 participate in activities suited to their individual needs.

31 (e) The facility shall be clean, sanitary, and in good
32 repair at all times.

33 (f) A nurses' call system shall be maintained in
34 operating order in all nursing units and provide visible
35 and audible signal communication between nursing
36 personnel and patients. Extension cords to each patient's
37 bed shall be readily accessible to patients at all times.

38 (g) If a facility has a significant beneficial interest in an
39 ancillary health service provider or if a facility knows that
40 an ancillary health service provider has a significant

1 beneficial interest in the facility, as provided by
2 subdivision (a) of Section 1323, or if the facility has a
3 significant beneficial interest in another facility, as
4 provided by subdivision (c) of Section 1323, the facility
5 shall disclose that interest in writing to the patient, or his
6 or her representative, and advise the patient, or his or her
7 representative, that the patient may choose to have
8 another ancillary health service provider, or facility, as
9 the case may be, provide any supplies or services ordered
10 by a member of the medical staff of the facility.

11 A

12 (h) A facility is not required to make any disclosures
13 required by this subdivision to any patient, or his or her
14 representative, if the patient is enrolled in an
15 organization or entity which provides or arranges for the
16 provision of health care services in exchange for a prepaid
17 capitation payment or premium.

18 (i) *A resident of a nursing facility may appeal the*
19 *facility's refusal to readmit him or her, if the resident has*
20 *been hospitalized in an acute care hospital and asserts a*
21 *right to readmission pursuant to bed hold provisions or*
22 *readmission rights of either state or federal law. The*
23 *appeal shall be adjudicated by the state hearing officers*
24 *designated to adjudicate appeals of transfers and*
25 *discharges of nursing facility residents. The nursing*
26 *facility shall readmit any resident who has filed an appeal*
27 *under this subdivision, pending the final determination of*
28 *the hearing officer.*

29 SEC. 14. Section 7183 of the Health and Safety Code
30 is amended to read:

31 7183. (a) Complete patient medical records
32 required of a health facility pursuant to regulations
33 adopted by the department in accordance with Section
34 1275 shall be kept, maintained, and preserved with
35 respect to the requirements of this chapter when an
36 individual is pronounced dead by determining that the
37 individual has sustained an irreversible cessation of all
38 functions of the entire brain, including the brain stem.

39 (b) *A nursing facility shall provide to the coroner of*
40 *the county in which it is located a copy of the death*

1 *certificate of a resident within 24 hours of the resident's*
2 *death. Copies of all or any portion of the medical records*
3 *of the resident shall be transmitted to the coroner within*
4 *eight hours of a request by the coroner.*

5 SEC. 15. Section 14124.7 of the Welfare and
6 Institutions Code is amended to read:

7 14124.7. (a) No long-term health care facility
8 participating as a provider under the Medi-Cal program
9 shall transfer *within the facility*, or seek to evict, out of the
10 facility, any resident as a result of the resident changing
11 his or her manner of purchasing the services from private
12 payment or Medicare to Medi-Cal. *This section applies to*
13 *residents who have made a timely application for*
14 *Medi-Cal benefits and for whom an eligibility*
15 *determination has not yet been made.*

16 (b) This section does not apply to any resident of a
17 skilled nursing facility or intermediate care facility,
18 receiving respite care services, as defined in Section
19 1418.1 of the Health and Safety Code, unless it is already
20 being provided through a Medicaid waiver program
21 pursuant to Section 1396n of Title 42 of the United States
22 Code, or is already allowed as a covered service by the
23 Medi-Cal program.

24 SEC. 16. (a) The State Department of Health
25 Services shall submit a report to the Legislature on or
26 before July 1, 2000, concerning the methodology for
27 reimbursement of skilled nursing facilities under the
28 Medi-Cal program.

29 (b) The report shall be prepared in consultation with
30 providers associations, consumer advocates, and labor
31 organizations. The report shall do all of the following:

32 (1) Contain policy analysis as to how the
33 reimbursement methodology may be utilized to ensure
34 that Medi-Cal expenditures for patient services in skilled
35 nursing facilities have a positive impact on the quality of
36 care.

37 (2) Consider methodology that contains incentives for
38 higher quality of care than minimal regulatory
39 requirements and methods of reducing reimbursement

1 for facilities that do not provide the quality of care
2 required by state and federal laws and regulations.

3 (3) Take into consideration factors such as acuity
4 levels of residents and resident outcome criteria,
5 including the development of quantifiable quality
6 criteria.

7 (4) Identify what legislative and regulatory changes
8 are necessary to implement the policies and
9 methodologies considered in the report.

10 SEC. 17. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because the only costs that may be incurred
13 by a local agency or school district will be incurred
14 because this act creates a new crime or infraction,
15 eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition
18 of a crime within the meaning of Section 6 of Article
19 XIII B of the California Constitution.

